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March 8, 2002

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CRAIG H. CALDWELL, JR.
JACK W. HYDER, JR.
MYERS N. MASSENGILL, II

REC'D TN
REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY

CRAIG H. CALDWELL
FRANK WINSTON
OF COUNSEL

VIA AIRBORNE EXPRESS

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *United Cities Gas Petition for Approval of New or Revised Franchise Agreements
with Kingsport, Bristol, Morristown and Maury County*
Docket No. 00-00562

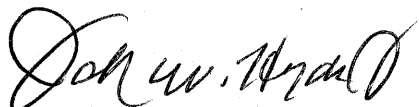
Dear Mr. Waddell:

Enclosed for filing is the original, accompanied by thirteen (13) copies, of the *Direct
Testimony of Anthony R. Massey*.

Copies have been served on all interested parties in accordance with the certificate of
service.

This case is set for hearing on March 14, 2002, before Jonathan N. Wike.

Very truly yours,



Jack W. Hyder, Jr.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

REC'D TN
REGULATORY AUTH.
*02 MAR 11 PM 12 14
OFFICE OF THE
EXECUTIVE SECRETARY

IN RE:

**UNITED CITIES GAS PETITION FOR
APPROVAL OF NEW OR REVISED
FRANCHISE AGREEMENTS WITH
KINGSPORT, BRISTOL, MORRISTOWN
AND MAURY COUNTY**

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Docket No. 00-00562

**DIRECT TESTIMONY
OF
ANTHONY R. MASSEY**

March 8, 2002

Filed by the City of Bristol Tennessee

1 ANTHONY R. MASSEY, the witness, having first been duly sworn, testified as follows:
2

3 **Q. Please state your name, address and age.**
4

5 A. I am Anthony R. Massey, more commonly known as Tony Massey. I live at 10 Compton,
6 in Bristol, Sullivan County, Tennessee, and I am 43 years of age.
7

8 **Q. By whom are you employed?**
9

10 A. I am employed by the City of Bristol Tennessee as its city manager. I have held this position
11 since June 24, 1996.
12

13 **Q. What is your educational background?**
14

15 A. I graduated from the University of Tennessee with a bachelor's degree in political science.
16 I also hold a master's degree in Public Administration from the University of Tennessee and
17 an associate's degree in Risk Management.
18

19 **Q. What other experience have you had in public service?**
20

21 A. I've worked in local government for approximately 18 years. I was employed by the First
22 Tennessee Development District; I was a city planner for Tullahoma, Tennessee; I served
23 as city manager of Savannah, Tennessee; I worked for the Tennessee Municipal League Risk
24 Management Pool; and I served as assistant city manager and city recorder for Kingsport,
25 Tennessee.
26

27 **Q. Do you belong to any professional organizations?**
28

29 A. I am a member of the International City Managers Association and the Tennessee City
30 Managers Association.
31

32 **Q. Have you had any training in negotiating franchise agreements with private utility
33 companies?**
34

35 A. I've attended several seminars which dealt with the use of public rights-of-way by private
36 companies.
37

38 **Q. What type of government does the City of Bristol have?**
39

40 A. The City of Bristol is a municipal corporation located in Sullivan County existing under and
41 governed by a private act charter enacted by the Tennessee general assembly. Bristol has
42 been in continuous existence since 1856. Bristol's governing body consists of a five-person
43 city council elected by the qualified voters of the city. The members of the city council serve
44 four-year staggered terms of office, and elections are held every two years. Each year the
45 city council selects one of its members to serve as mayor for the ensuing year. The city

1 charter also provides that Bristol's chief administrative officer is an appointed city manager
2 who serves at the pleasure of the city council.
3

4 **Q. As the chief administrative officer of the City of Bristol do you have custody and control**
5 **of the official records of the city?**
6

7 A. Yes, I do. Most of the city's records are maintained by the city recorder who reports
8 directly to me. Under the city charter the city manager appoints the city recorder.
9

10 **Q. In preparing to testify, have you reviewed Bristol's public records?**
11

12 A. Yes, I have. The city has several files relating to the negotiation of franchise agreements
13 with United Cities, and I have reviewed those files to refresh my memory in preparing to
14 testify.
15

16 **Q. What is the size of Bristol?**
17

18 A. Bristol's population is approximately 25,000. Its corporate boundaries encompass an area
19 of approximately 30.5 square miles. Bristol has approximately 450 miles of public rights-of-
20 way. The Sullivan County Comprehensive Growth Plan, as adopted in 2000 pursuant to
21 *Tenn. Code Ann. § 6-58-101 et seq.*, designates Bristol's urban growth boundaries as
22 comprising an additional 34.80 square miles.
23

24 **Q. What is the historical relationship between the City of Bristol and United Cities Gas**
25 **Company.**
26

27 A. The City of Bristol has had a very close relationship with United Cities since it acquired the
28 assets of the old Bristol Gas Company in the 1960's. For many years, United Cities and its
29 predecessors have operated a natural gas transmission and distribution system in Bristol under
30 various franchise agreements with the city. Each such agreement has allowed United Cities
31 to operate a gas system within Bristol and to use the public rights-of-way for its gas lines and
32 related apparatus. In return, the franchise agreements provided that United Cities would pay
33 a public franchise fee. In 1983, United Cities and Bristol entered into a franchise agreement
34 which provided for a term of 25 years and a franchise fee of 2½% of annual gross revenues
35 from the sale of gas in the city.
36

37 United Cities has approximately 487,000 feet of gas lines in Bristol. Ninety-five percent
38 (95%) of these lines lie within the public rights-of-way. In the absence of a franchise
39 agreement with Bristol allowing United Cities to use the public rights-of-way, United Cities
40 could not provide an effective level of gas service to the city or the surrounding area.
41

42 For several decades the city was also a close neighbor of United Cities since the gas company
43 offices were located adjacent to Bristol's municipal building.
44

45 **Q. Are you familiar with a renegotiation of the 1983 franchise agreement between Bristol**
46 **and United Cities?**

1 A. Yes, I am. For many years, Sullivan County used Bristol's municipal building for county
2 offices and courts. This included the Law Court, Chancery Court, General Sessions Court,
3 Register of Deeds, Trustee, County Clerk and judges chambers. In the early 1990's,
4 Sullivan County and Bristol agreed to construct a new Justice Center building to house the
5 courts and most of the county offices. This would free space in the municipal building for
6 use by the city. The new Justice Center would be constructed on property adjacent to the
7 municipal building which served as its parking lot. This would necessitate the acquisition
8 of additional property for public parking.
9

10 About this time United Cities announced plans to move its offices. Bristol approached
11 United Cities, expressing the city's desire to lease from the gas company a tract of adjoining
12 property. This property would be used as a public parking lot for the new Justice Center and
13 Bristol's municipal building. United Cities was receptive to leasing the property to Bristol,
14 and it advised the city that the base rent for the leased property would be \$6,600.00 per year
15 with an annual lease escalation of 2.5%. United Cities, then proposed an alternative:
16

17 "In an effort to lower the costs to our Bristol and Sullivan County
18 taxpayers and ratepayers, United Cities is willing to waive all base
19 rent and escalation amounts in exchange for a City of Bristol,
20 Tennessee franchise extension to coincide with the lease term, both
21 of which would then expire in 2025."
22

23 This proposal was agreeable to Bristol and Sullivan County, and the terms of a new franchise
24 agreement were negotiated by Bristol and United Cities. Language for the new franchise
25 agreement, including a provision for a periodic adjustment of the franchise fee, was proposed
26 by United Cities. On October 3, 1995, the Bristol city council, following a public hearing,
27 adopted on final reading an ordinance granting a new franchise to United Cities, and at the
28 same meeting the city council passed a resolution approving a 30-year ground lease
29 agreement with United Cities. The term of the franchise was 30 years, and the term of the
30 lease was 30 years. The new franchise was accepted by United Cities on November 6, 1995.
31

32 **Q. What was the term of the 1983 franchise agreement between the City of Bristol and**
33 **United Cities?**
34

35 A. The 1983 franchise agreement had a term of 25 years, so it extended until 2008. In 1995,
36 however, United Cities approached the city about renegotiating the agreement so as to
37 provide a new 30-year term. The gas company was very interested in a new long-term
38 franchise agreement with the city. The city was very interested in leasing property from
39 United Cities.
40

41 **Q. Why was the lease of the property from United Cities important to the city?**
42

43 A. The lease of this property from the gas company was essential to provide public parking for
44 the patrons of the municipal building and the new county Justice Center. The new county
45 building was to be constructed on the tract that had previously served as the public parking
46 lot, and without the lease of the gas company's property there would have been no public

1 parking available for these governmental buildings. It was absolutely critical that we get this
2 property from the gas company -- otherwise there would have been no parking for the public.
3 The new Sullivan County Justice Center project was completed in 1998, and the adjacent
4 property leased from the gas company has provided free public parking for patrons of that
5 building and Bristol's municipal building. It's used by the public daily.
6

7 **Q. Did there come a time when United Cities approached Bristol about amending the 1995**
8 **franchise agreement?**

9
10 **A.** Yes, in early 1997, United Cities approached Bristol with a proposed amendment to the 1995
11 franchise agreement. By letter of January 7, 1997, United Cities notified Bristol of its plan
12 to merge into Atmos Energy Corporation and asked the city to authorize "the transfer of the
13 franchise for a natural gas transmission and distribution system in the City of Bristol, TN,
14 and held by United Cities Gas Company, to Atmos Energy Corporation." A proposed
15 ordinance was enclosed with the letter. By letter dated January 16, 1997, I notified United
16 Cities that under Section XIV of the 1995 franchise agreement, the city would have the first
17 right of refusal to purchase the assets of United Cities in Bristol and that the city would like
18 to discuss its options in that regard.
19

20 By letter of February 11, 1997, I advised United Cities that the city was "willing to begin
21 negotiations as to a reasonable valuation of 'those assets' using the assessed amounts you
22 have already provided for tax purposes as a starting point." By letter dated March 11, 1997,
23 I further advised United Cities that:
24

25 "[C]ity staff has a responsibility to fully research whether our
26 municipality would take over natural gas operations. Therefore, your
27 proposed approval of the merger ordinance will not be acted upon by
28 the City of Bristol."
29

30 "Thank you for your continuing cooperation. I look forward to
31 speaking with you again soon toward resolving this matter to our
32 mutual satisfaction."
33

34 United Cities took the position that its proposed merger with Atmos fell outside the scope of
35 Section XIV of the franchise agreement, and sent the city a legal memorandum in support
36 of this position. The city council directed me to pursue Bristol's option to acquire the gas
37 company's assets. Any purchase by Bristol of United Cities' assets within the city was
38 complicated by the fact that United Cities had a unified system serving both Bristol and its
39 sister city, Bristol, Virginia. The separation of that system, and the cost to do so, was
40 discussed by United Cities in a letter to the city dated April 14, 1997. The letter also
41 requested "at the earliest convenience of the city council, an ordinance authorizing the
42 transfer of the franchise for the natural gas transmission and distribution system in the City
43 of Bristol, TN and held by United Cities Gas Company be transferred to Atmos Energy
44 Corporation."
45

1 Bristol continued to explore whether it would pursue acquisition of the gas company's assets
2 in the city. On one occasion the mayor and I traveled to Nashville and met with the staff of
3 the Tennessee Regulatory Authority. The TRA staff did not encourage the city to pursue the
4 acquisition, and suggested that Bristol should try to reach a settlement with United Cities
5 under which Bristol would refrain from getting in the gas business.
6

7 We then commenced negotiations with United Cities in a effort to reach a settlement by
8 which the city would waive any rights it might have to acquire assets from the gas company
9 under Section XIV of the 1995 franchise agreement and would authorize a transfer of that
10 franchise to Atmos. As part of our negotiations with United Cities, Bristol suggested an
11 amendment to its 1995 lease with the gas company so as to include an additional parcel of
12 real property on which was situated an office building which United Cities intended to vacate.
13 By letter of December 11, 1997, United Cities made a settlement proposal which included
14 the following amendments to the 1995 franchise agreement:
15

- 16 1. a recognition that United Cities was a division of Atmos Energy
17 Corporation
18
- 19 2. an extension of the 30-year term so as to commence from the date
20 of the approval of the amended franchise ordinance and the filing of
21 acceptance thereof by United Cities
22
- 23 3. an increase in the franchise fee from 5% to 6%
24
- 25 4. a provision stating that a statutory merger, consolidation,
26 recapitalization, or sale or transfer of the common stock of United
27 Cities would not constitute a sale or transfer of assets under Section
28 XIV
29

30 In addition, United Cities' proposal to Bristol included the following amendments to the 1995
31 lease agreement:
32

- 33 1. an extension of the 30-year term to correspond with the 30-year
34 term of the amended franchise agreement
35
- 36 2. including an addition tract of 1.69 acres on which was situated an
37 office building which United Cities intended to vacate
38

39 Language making these amendments to the 1995 franchise agreement and the 1995
40 lease agreement was included with the letter.
41

42 The proposal of United Cities was generally acceptable to Bristol. Negotiations as
43 to the language for the amended lease continued between attorneys for Atmos and the
44 city. Issues arose concerning the indemnification demanded by United Cities'
45 attorney which would have required the city to waive its sovereign immunity by
46 acquiring insurance with limits beyond that specified in the Tennessee Governmental

1 Tort Liability Act. The city attorney and the city's insurance carrier recommended
2 against using the language desired by United Cities' attorney. United Cities was
3 concerned about its potential liability to someone who might be injured on the
4 property leased to the city.
5

6 Finally, in 1999, all issues between Bristol and United Cities were resolved, and
7 language for the amended lease was drafted which was acceptable to both parties.
8 As part of the compromise, Bristol agreed it would use the additional leased tract
9 only as a parking lot and it would not utilize the building for any purpose. At its
10 regular meeting on June 1, 1999, the Bristol city council considered the negotiated
11 amendments to the franchise agreement (Ordinance 99-13) and the lease agreement
12 (Ordinance 99-14) with United Cities. In my cover memorandum to the city council,
13 I stated:
14

15 "These two ordinances are linked to the overall agreement city staff
16 has reached with United Cities Gas Company. As City Council is
17 aware, we have been in negotiations for approximately 2½ years
18 regarding the Atmos acquisition of United Cities Gas Company."
19

20 "Mr. Hyder's memorandums outline the agreement upon amendments
21 to our franchise agreement. The city still retains the right to purchase
22 and acquire natural gas operations in the future. We do, however,
23 agree not to contest a corporate merger."
24

25 "City Council may also recall that the city received \$25,000 from
26 United Cities Gas Company earlier this year as a good faith gesture.
27 We earmarked \$20,000 toward the Avoca Library project and \$5,000
28 to the country music mural downtown."
29

30 "Ordinance 99-14 extends our lease agreement for the parking lot to
31 include the United Cities Gas Company building and lot. Note that
32 the United Cities/Atmos attorney agreed only to use the property as
33 a future parking lot."
34

35 "I have been in discussion with Sullivan County officials regarding
36 this property. They have indicated a willingness to cost share with
37 Bristol in demolition and construction of a new parking lot at this
38 site."
39

40 Attached was a memorandum from Bristol's city attorney outlining the changes to the
41 franchise and the lease. The city attorney further advised the city council: "These two
42 ordinances constitute a unified transaction with United Cities Gas Company. Neither
43 ordinance can stand alone, and both must pass in order for either to become effective."
44

45 The Bristol city council passed both of the ordinances by unanimous (5-to-0) vote at its
46 meeting on June 1, 1999. At its regular meeting on August 5, 1999, the Bristol city council

1 held a public hearing on Ordinance 99-13 (amended franchise). No one spoke at the public
2 hearing. A public hearing was also held by the city council on Ordinance 99-14 (amended
3 lease). No one spoke at the public hearing. Each ordinance was passed on final reading by
4 unanimous vote of the city council.
5

6 **Q. What was your role in the 2½ years of negotiations between Bristol and United Cities?**
7

8 **A.** I was the principal negotiator for the city. Over this period I had numerous telephone
9 conversations and meetings with officials and representatives of the gas company. Some of
10 executives of United Cities with whom I negotiated were: James M. Pugh (local manager),
11 Thomas E. Upchurch (manager - risk and insurance), Mark Thessin (vice president -
12 regulatory affairs) and Paul E. Kennedy (vice president and general manager). Once the
13 terms of a settlement of all issues between the city and United Cities were reached the
14 lawyers took over to prepare the necessary paperwork. They also negotiated the legal
15 language for a significant period of time.
16

17 **Q. Did Bristol force this amended franchise agreement on United Cities?**
18

19 **A.** Absolutely not. We had a 30-year agreement with the gas company that ran through 2025,
20 and the city was satisfied with that agreement. It was United Cities, not Bristol, that sought
21 in 1997 to amend the 1995 franchise agreement -- the gas company first raised the matter of
22 amending the 1995 franchise agreement. When it became obvious that United Cities would
23 be transferring its assets to Atmos Energy Corporation, we decided to explore the public's
24 right under the franchise agreement to acquire those assets in Bristol. The city has long
25 experience in operating public utility systems. Our water, sewer and electric power systems
26 have received numerous recognitions over the years, and we're proud of our ability to
27 provide the best in public utility services. It was only natural that the city might be interested
28 in providing natural gas service as other cities in Tennessee do. I was familiar with the
29 operation of a municipal gas system as a result of my experience as city manager of
30 Savannah, Tennessee.
31

32 The amended franchise agreement between the city and United Cities was the product of
33 arms' length negotiations between the city and United Cities extending over a period of 2½
34 years. United Cities freely and voluntarily consented to the terms of the amended franchise
35 and agreed to its terms. Most of the language we used in the amended franchise agreement
36 was proposed by United Cities. Each party was exercising its right to contract. The
37 franchise ordinance itself provided that upon United Cities':
38

39 "unconditional acceptance of the terms and conditions of this
40 ordinance amending Ordinance 95-60, signed by its president or other
41 authorized officer, and after the filing of such acceptance, the
42 provisions of this ordinance shall become and constitute a part of the
43 contract between the City of Bristol Tennessee and United Cities Gas
44 Company."
45

1 The obligations under the amended franchise were voluntarily assumed by United Cities, and
2 were not the result of the exercise of a governmental power, but of a contract which both
3 parties could make, and the annual payments agreed to by United Cities were compensation
4 to be paid to the public for United Cities' exercise of the franchise, subject to assent of the
5 city as proprietor of the public streets.
6

7 **Q. How was the amended franchise agreement related to the amended lease agreement?**
8

9 A. The amended franchise agreement was part of a package which Bristol negotiated with the
10 gas company and included a 30-year lease by the city of an additional tract of real property
11 to be used by the public for free parking at the Bristol municipal building and the new
12 Sullivan County Justice Center. The lease of the gas company property as a parking lot was
13 essential for public access to the expanded local government offices.
14

15 **Q. In what capacity was the Bristol city council acting when it negotiated and entered into**
16 **these agreements with United Cities?**
17

18 A. In negotiating and entering into the agreements with United Cities, the Bristol city council
19 was acting in the public interest as the duly elected representatives of the citizens of the city.
20 The city council was exercising the right of the public to contract with the gas company in
21 such manner as it determined was in the public interest.
22

23 **Q. In negotiating the settlement between United Cities and the citizens of Bristol, as**
24 **embodied in the amended franchise agreement and the amended lease agreement, what**
25 **was your goal?**
26

27 A. My goal was to protect the interest of the public -- to get the best deal we could get for the
28 public by whom I was employed and for whom I was acting.
29

30 **Q. Were you successful?**
31

32 A. Yes, the settlement of all issues between Bristol and United Cities, as set forth in the
33 amended franchise agreement and the amended lease agreement, benefits the public in
34 numerous ways:
35

36 ● it extends the 1995 lease of the gas company property to the public for a full 30-
37 year period
38

39 ● it assures the public it will be able to use this property as a parking lot for 30
40 years
41

42 ● it provides the parking lot to the public at no cost
43

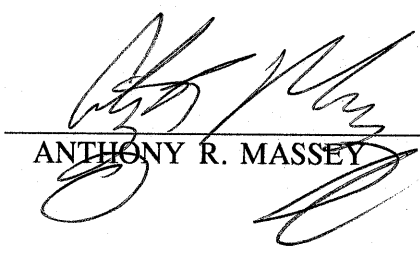
44 ● it satisfies a critical need by the public for parking facilities adjacent to the Sullivan
45 County Justice Center and the Bristol municipal building
46

- it gives the public an additional 1.69 acres to use for parking
- it provides this additional property to the public for a 30-year period at no cost
- it resolves 2½ years of negotiations between United Cities and Bristol
- it settles all issues between the city and the gas company with respect to the Atmos acquisition of United Cities' assets in Bristol
- it resolves the issue of whether the city will acquire and operate a gas system
- it gives the gas company a long-term commitment from the city, assuring the gas company it will have the right to operate in Bristol for the next 30 years and to use the public rights-of-way for its lines during that period
- it assures that United Cities, a private for-profit corporation, will compensate the public for its use of the public rights-of-way for its profit-making endeavors in the city
- it assures that the public will be compensated by the gas company for the risk assumed by the city in committing to the gas company for such a long term
- it gives the gas company a strong incentive to invest in additional infrastructure in the city for the long term so as to provide better and expanded gas service to the public
- it promotes industrial recruitment in Bristol and the surrounding area by assuring a long term presence of the gas company
- it assures that if the public rights-of-way generate revenue for the gas company, then the public will share in that revenue
- it continues to give the public the right to acquire the assets of United Cities in the event of a sale or transfer, thereby assuring the public it will have gas service whether provided by a private corporation or a public utility

Q. It's been some five years since you first began negotiating with United Cities, and it's been 2½ years since the Bristol city council approved the amended franchise agreement and the amended lease agreement with United Cities. As the chief administrative officer of the City of Bristol are you still satisfied this agreement serves the public interest?

A. Absolutely.

AND FURTHER THE WITNESS SAITH NOT.



ANTHONY R. MASSEY

Sworn to and subscribed before
me, the undersigned Notary
Public, on this the 8th day of
March, 2002

Pam Stewart

Notary Public

My commission expires:

10/13/04

CERTIFICATE OF SERVICE

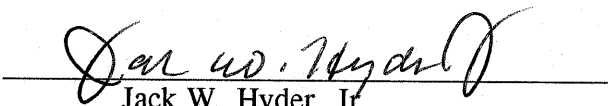
The undersigned certifies that on March 8, 2002, a copy of the foregoing was served by first class mail, postage prepaid, or by electronic transmission, on all counsel of record addressed as follows:

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